

Power Relations and Structural Inequality in Late-Life Divorce: A Socio-Legal Analysis of the Palembang Islamic Court Decisions in 2022

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Abstract

The increasing incidence of divorce among older couples signifies a notable shift in both the social structure and the legal framework of family law in Indonesia. While long-term marriages are typically associated with emotional stability and strong commitment, data from the Palembang Islamic Court indicate that individuals aged 56 and older remain susceptible to marital dissolution. This article aims to analyze the typology of causes behind late-life divorce and examine the legal reasoning employed by Muslim judges in adjudicating such cases. Adopting a socio-legal approach, the study integrates empirical data with a jurisprudential analysis of 56 divorce decisions issued by the Palembang Islamic Court in 2022. The findings reveal that late-life divorce does not occur abruptly; rather, it is the culmination of long-standing, structurally embedded conflicts, including domestic violence, economic subordination, and inequality in emotional and sexual relations. Furthermore, the study demonstrates that the judicial reasoning of Muslim judges is not entirely neutral; it reflects the internalization of prevailing social norms and institutionalized power relations within the adjudicative process. Accordingly, this article argues that late-life divorce should not be perceived merely as a personal failure but as a manifestation of gender-based structural inequality



operating across two primary domains: the domestic and the institutional. Thus, the study calls for a reformulation of Islamic legal approaches and the development of a more gender-responsive religious court system capable of addressing structural disparities in the context of elderly divorce.

[Fenomena meningkatnya angka perceraian pada pasangan usia lanjut menandai pergeseran penting dalam struktur sosial dan konfigurasi hukum keluarga di Indonesia. Meskipun pernikahan jangka panjang sering diasosiasikan dengan stabilitas emosional dan komitmen yang kuat, data dari Pengadilan Agama Palembang menunjukkan bahwa pasangan berusia 56 tahun ke atas tetap berada dalam kondisi rentan terhadap perceraian. Artikel ini bertujuan untuk menganalisis tipologi penyebab perceraian usia lanjut dan mengkaji konstruksi argumentasi hukum yang digunakan oleh hakim muslim dalam memutus perkara, melalui pendekatan sosio-legal yang mengintegrasikan studi lapangan dengan analisis yurisprudensi terhadap 56 putusan Pengadilan Agama Palembang tahun 2022. Hasil penelitian menunjukkan bahwa perceraian pada usia lanjut tidak terjadi secara tiba-tiba, melainkan merupakan akumulasi konflik jangka panjang yang bersifat struktural, termasuk kekerasan domestik, subordinasi ekonomi, serta ketimpangan dalam relasi seksual dan emosional. Temuan ini juga memperlihatkan bahwa argumentasi hukum hakim muslim dalam memutus perkara tidak sepenuhnya bersifat netral, tetapi turut mencerminkan internalisasi norma sosial dan struktur relasi kuasa yang terlembaga dalam sistem peradilan. Dengan demikian, artikel ini menegaskan bahwa perceraian usia lanjut bukan sekadar kegagalan relasi personal, melainkan perlu dipahami sebagai manifestasi dari ketidaksetaraan gender yang beroperasi dalam dua arena utama: domestik dan institusional. Oleh karena itu, diperlukan reformulasi pendekatan hukum Islam dan penguatan sistem peradilan agama yang lebih responsif terhadap dimensi ketimpangan struktural berbasis gender dalam konteks perceraian lansia.]

Keywords: Islamic Courts, Late-Life Divorce, Legal Reasoning, Power Relations, Structural Inequality.

Introduction

The rising rate of divorce among older adults has emerged as a significant area of scholarly attention in global socio-legal discourse over the past two decades.¹ In various Western countries, this trend has shown marked increases alongside social, economic, and cultural transformations. For instance, in the United Kingdom, divorces among older couples accounted for 6% of all divorces in 2002.² In the United States, one in four divorces in 2010 involved individuals aged 50 and above.³ Similar patterns have also been observed in Muslim-majority contexts, including

¹ Susan L Brown and I-Fen Lin, "The Graying of Divorce: A Half Century of Change," ed. Zhen Cong, *The Journals of Gerontology: Series B* 77, no. 9 (September 1, 2022): 1710–20.

² S. Cecchi and P. Beffa Negrini, "The Grey Divorce: An Unknown and Growing Up Reality," *Giornale di Gerontologia* 53, no. 5 (2005): 555–59.

³ S. L. Brown and I.-F. Lin, "The Gray Divorce Revolution: Rising Divorce Among Middle-Aged and Older Adults, 1990–2010," *The Journals of Gerontology Series B: Psychological Sciences and Social Sciences* 67, no. 6 (November 1, 2012): 731–41.

Malaysia and Indonesia. While early studies, such as those conducted by Gavin Willis Jones, indicated a decline in divorce rates at the end of the 19th century,⁴ the last two decades have witnessed a sharp resurgence,⁵ driven largely by urbanization, modernization, socio-economic pressures, and shifting social norms.⁶ Consequently, scholarly inquiry into late-life divorce has gained increasing relevance, not only as a social phenomenon but also as a legal event that reflects deeper institutional transformations within family structures.

In Indonesia, divorce among older couples has emerged as a significant legal and social issue. Data from the Palembang Islamic Court indicate that in 2022, 56 divorce cases involved individuals aged 56 and above, comprising 29 *talak* (husband-initiated divorces) and 27 *ceraai gugat* or *khul'* (wife-initiated divorces). In *talak* cases, the most commonly cited reasons included perceived disrespect from the wife, excessive economic demands, jealousy, and infertility. Conversely, *ceraai gugat* cases were primarily filed by wives due to domestic violence, neglect of financial and emotional obligations, and unauthorized polygamy. Additional contributing factors included alcohol abuse, apostasy (*murtad*), and disputes with extended family members.⁷ These findings suggest that the longevity of a marriage does not guarantee balance in household power dynamics. Instead, structural conflicts and asymmetrical relationships often accumulate and escalate, ultimately leading to divorce in later life. Therefore, a deeper understanding of the typologies of causation and the judiciary's legal reasoning in addressing these cases is critically needed.

Although divorce in Indonesia has been the subject of extensive research across various disciplines, empirical studies specifically focusing on late-life divorce remain scarce. Tim Heaton and Mark Cammack noted that modernization in Indonesia initially contributed to a decline in divorce rates, contrasting with trends observed in the West. However, over the last two decades, modernization has instead driven an increase in divorce, accompanied by increasingly complex motives.⁸ Rachel Rinaldo, Eva F. Nisa, and Nina Nurmila have emphasized the influence of class and educational background in shaping divorce dynamics: middle-class, educated women tend to be more willing to end dysfunctional marriages due to their economic independence, whereas women from lower socio-economic

⁴ Gavin W. Jones, "Modernization and Divorce: Contrasting Trends in Islamic Southeast Asia and the West," *Population and Development Review* 23, no. 1 (March 1997): 95–114.

⁵ Gavin Willis Jones, "Muslim and Non-Muslim Divorce Trends in Southeast Asia in the 21st Century," *Asian Journal of Social Science* 51, no. 3 (September 2023): 137–45.

⁶ See: Gavin W. Jones, "Divorce in Malaysia: Historical Trends and Contemporary Issues," *Jurnal Institutions and Economies* 13, no. 4 (October 1, 2021): 35–60; I-Fen Lin et al., "Antecedents of Gray Divorce: A Life Course Perspective," *The Journals of Gerontology: Series B* 73, no. 6 (August 14, 2018): 1022–31; Jasmin Dall'Agnola and Hélène Thibault, "Online Temptations: Divorce and Extramarital Affairs in Kazakhstan," *Religions* 12, no. 8 (August 2021): 654.

⁷ "Directory of Decisions of the Supreme Court of Indonesia," accessed March 19, 2023, https://putusan3.mahkamahagung.go.id/search.html?q=&jenis_doc=&cat=&jd=&tp=0&court=402242PA683+++++++&t_put=2022&t_reg=&t_upl=&t_pr.

⁸ Tim Heaton and Mark Cammack, "Explaining the Recent Upturn in Divorce in Indonesia: Developmental Idealism and the Effect of Political Change," *Asian Journal of Social Science* 39, no. 6 (2011): 776–96.

strata are more likely to initiate divorce in response to violence or neglect.⁹ Luluk Latifah and Iskandar Ritonga identified 16 primary causes of divorce in Indonesia,¹⁰ with economic instability being the most dominant factor across regions. Asna Husin has specifically addressed late-life divorce as a complex phenomenon rooted in the degradation of emotional bonds and intersecting religious, social, and psychological factors, advocating for stronger premarital counseling programs.¹¹ Similarly, Ramdani Wahyu Sururie, Mohammad Athoillah, and Muhammad Iqbal Zia Ulhaq stress the importance of a holistic strategy that combines premarital education with a revitalized role for the religious judiciary to enhance Muslim family resilience.¹² On a related note, Asman and Resali bin Muda observed that the COVID-19 pandemic exacerbated the divorce crisis due to economic hardship and declining marital communication.¹³

Despite the growing body of literature on divorce in Indonesia—from sociological, anthropological, and legal perspectives—there remains a significant gap in focused studies on late-life divorce, particularly those that examine the interplay between gendered power relations and legal constructions. Previous research has primarily framed late-life divorce in terms of individual factors such as emotional disconnection, financial strain, or lack of communication. However, this article argues that divorce at an advanced age is not merely the result of personal incompatibility; rather, it reflects deeply embedded social structures operating across two interrelated spheres: the domestic and the institutional. In the domestic sphere, women often occupy subordinate roles for decades, with limited bargaining power. When they eventually initiate divorce, particularly through *cerai gugat* petitions, the act constitutes a legal step and a form of resistance against long-standing domination. At the institutional level, courts, which are expected to function as neutral arbiters, often reproduce inequality through evidentiary burdens that are biased against women, mediation processes that prioritize the preservation of marriage over substantive justice, and legal reasoning that privileges social morality at the expense of individual rights. It highlights a critical gap in earlier studies, which have mainly overlooked how legal systems perpetuate unequal relations through formal regulations and courtroom practices.

⁹ Rachel Rinaldo, Eva F. Nisa, and Nina Nurmila, "Divorce Narratives and Class Inequalities in Indonesia," *Journal of Family Issues* 45, no. 5 (May 2024): 1195–1216.

¹⁰ Luluk Latifah and Iskandar Ritonga, "Difference of Divorce Determination in Indonesia: A Study Systematic Literature Review," *Jurnal Biometrika dan Kependudukan* 11, no. 02 (November 1, 2022): 223–35.

¹¹ Asna Husin, "Falling Out of Love: Divorce of Three Acehnese Ubanan Couples in the Islamic Law Perspective," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 3 (November 30, 2023): 1868–96.

¹² Ramdani Wahyu Sururie, Mohammad Athoillah, and Muhammad Iqbal Zia Ulhaq, "Strategies to Prevent Increasing Divorce Rates for Muslim Families in Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (May 9, 2023): 734–59.

¹³ Asman Asman and Resali bin Muda, "Social Dynamics on the Increasing Divorce of Malay Communities during COVID-19 in Sambas West Kalimantan, Indonesia Perspective of Islamic Family Law," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 2 (August 23, 2023): 153–66.

In response to this critical gap in the literature, the present study adopts a socio-legal approach that integrates fieldwork with doctrinal analysis. Fieldwork was conducted at the Palembang Islamic Court, a first-instance court responsible for adjudicating family law cases in the region. Data were collected through in-depth interviews with four Muslim judges who are directly involved in handling late-life divorce cases. Additionally, the study analyzed 56 Islamic court decisions on divorce involving litigants aged 56 and older, issued in 2022. This age threshold aligns with the classification of elderly populations established by Indonesia's Ministry of Health in 2009.¹⁴ All data were analyzed qualitatively using a theoretical framework that conceptualizes patriarchy as a dynamic structure manifesting in both private and public forms.¹⁵ Structural gender inequality is evident in both spheres and is reflected in the judicial decisions examined in this article.

Divorce Provisions and Grounds for Divorce Under State Law in Indonesia

Divorce within the Indonesian legal system is recognized as a legitimate legal mechanism for terminating a marriage. However, it must be conducted through judicial proceedings to ensure its legal validity.¹⁶ The legal foundation for divorce in Indonesia is primarily governed by Marriage Law No. 1 of 1974, which outlines the substantive grounds for divorce and both parties' post-divorce rights and obligations.¹⁷ The procedural aspects of divorce are further elaborated in Government Regulation No. 9 of 1975 on the Implementation of Marriage Law No. 1 of 1974, particularly Articles 14 to 36, which stipulate that divorce must be filed in court and proceed through several formal stages, including mediation and evidentiary hearings.¹⁸ Additionally, technical provisions for Muslim couples are codified in Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law (*Kompilasi Hukum Islam*, or KHI), which provides specific procedural guidelines for Islamic courts in handling divorce cases. These regulatory frameworks collectively aim to prevent unilateral divorces outside the judicial process, thereby safeguarding the rights of divorcing spouses and protecting the best interests of children who may be adversely affected by the dissolution of marriage.¹⁹

Within Indonesia's legal framework, the permissible grounds for divorce are explicitly regulated to ensure that divorces are granted only on legally recognized

¹⁴ Muchammad Al Amin, "Klasifikasi Kelompok Umur Manusia Berdasarkan Analisis Dimensifraktal Box Counting dari Citra Wajah dengan Deteksi Tepi Canny," *MATHunesa* 2, no. 6 (2017): 33–42.

¹⁵ Sylvia Walby, *Theorizing Patriarchy* (Oxford, UK; Cambridge, MA, USA: Wiley-Blackwell, 1991), 23–24.

¹⁶ See: Stijn Cornelis Van Huis, "Khul' Over the Longue Durée: The Decline of Traditional Fiqh-Based Divorce Mechanisms in Indonesian Legal Practice," *Islamic Law and Society* 26, no. 1–2 (January 1, 2019): 58–82; Nursaidah Nursaidah, Adi Nur Rohman, and Panti Rahayu, "The Out of Court Divorce Model and Its Legal Implications: A Juridical Study in Babelan District Bekasi," *Syariah: Jurnal Hukum dan Pemikiran* 20, no. 2 (December 14, 2020): 159–74.

¹⁷ "Law No. 1 of 1974 on Marriage," Articles 38–41.

¹⁸ "Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage," Articles 14–36.

¹⁹ Abd Karim Faiz, Zulfahmi Ar, and Ahmad Izzuddin, "Between State Law and Islamic Law: The Practice of Divorce Outside the Situbondo Religious Courts, Indonesia," *Journal of Islamic Law* 3, no. 2 (August 31, 2022): 176–92.

and substantiated bases.²⁰ According to Marriage Law No. 1 of 1974, a marriage may be terminated for three primary reasons: death, divorce, and judicial annulment.²¹ Death automatically dissolves a marital relationship, while divorce can only be granted through a formal court decision issued by a Muslim judge, following due legal process. In certain circumstances, a court ruling may also annul a marriage due to legal defects or violations of the conditions for a valid Islamic marriage. Under Islamic law, four common grounds often trigger divorce: disobedience (*nushūz*) by the wife, disobedience by the husband, protracted marital conflict (*shiqāq*), and sexual misconduct, such as adultery, which disrupts household harmony. Understanding these grounds is essential, as judges cannot grant a divorce petition without adequate legal justification or sufficient evidentiary support to demonstrate marital breakdown.²²

Furthermore, Article 19 of Government Regulation No. 9 of 1975, reinforced by Article 116 of the KHI, outlines specific legal grounds that may be invoked in divorce proceedings.²³ These grounds include adultery, habitual misconduct such as gambling or alcoholism, desertion for two consecutive years without justification, imprisonment for five years or more, domestic violence, physical disability or chronic illness that prevents the performance of marital duties, and prolonged marital discord with no reasonable prospect of reconciliation. These stipulations demonstrate that divorce in Indonesia is permissible only when legal facts substantiate the irreparable breakdown of the marriage and when either or both parties have suffered physical, psychological, or economic harm as a result. In addition to these material grounds, Islamic legal doctrine recognizes two further bases for divorce: breach of *taklik talak* (a conditional divorce contract) by the husband and *murtad*, which often leads to spiritual incompatibility. Consequently, Indonesian legal norms incorporate not only material and procedural considerations but also spiritual and moral dimensions, reflecting the integrative role of religion in the lives of the country's predominantly Muslim population.²⁴

From a legal standpoint, divorce in Indonesia encompasses not only the dissolution of marital ties but also the safeguarding of post-divorce rights and obligations for both spouses and their children.²⁵ Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Court mandates that parties seeking a divorce

²⁰ Hartini Hartini, Haniah Ilhami, and Rahmawati Mohd Yusoff, "Sole Custody and the Implication of Fault-Based Divorce Under the Indonesian Legal System," *Journal of Indonesian Legal Studies* 9, no. 1 (May 8, 2024): 249–78.

²¹ "Law No. 1 of 1974 on Marriage," Article 38.

²² Martina Purna Nisa, "Critical Review of Domestic Violence as Reason for Divorce (Comparison of Divorce Laws in Indonesia, Malaysia and the Maldives)," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (June 22, 2021): 1–23.

²³ See: "Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage," Article 19; "Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law," Article 116.

²⁴ Ihdi Karim Makinara, Jamhuri Ungel, and Fitrah Arrazi, "Physical Handicap as a Reason for Divorce: Case Study at the Sharia Court, Banda Aceh, Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (December 30, 2023): 318–34.

²⁵ Lilik Andar Yuni, "The Use of Ex Officio to Fulfill Women's Post-Divorce Rights at the Samarinda Religious Court," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 21, no. 2 (December 29, 2021): 135–54.

must first engage in court-annexed mediation to achieve reconciliation.²⁶ If mediation is unsuccessful, the court will proceed with the divorce trial, ensuring that the rights of both parties are considered, including spousal maintenance for the wife and custodial arrangements for minor children.²⁷ The legal framework also affirms that divorce does not absolve the husband of his responsibilities toward his former wife and children, particularly concerning post-divorce financial support and inheritance rights. Therefore, divorce in Indonesia is not merely a legal act of dissolution but a structured process aimed at achieving equitable outcomes for all parties involved, ensuring that no party suffers disproportionate harm as a result of the marriage breakdown.²⁸

Divorce in Indonesia is governed by a structured and comprehensive legal system that employs strict procedural mechanisms to balance individual rights with societal order.²⁹ While divorce is a legally recognized right, the extensive procedural requirements and high evidentiary thresholds reflect a legal culture that prioritizes the preservation of marriage and emphasizes reconciliation over separation.³⁰ In the context of late-life divorce, a more holistic approach is essential—one that incorporates premarital education, family counseling, and financial literacy programs for aging couples to mitigate the risk of divorce stemming from long-term disharmony or economic instability. Looking ahead, more robust legal interventions and social policy initiatives are necessary to promote marital stability and reduce divorce rates, particularly among couples in long-term marriages.³¹

Typology of Causes of Divorce Among Older Couples

Divorce among older couples reflects increasingly complex social dynamics within Indonesia's family law system, particularly within the jurisdiction of the Palembang Islamic Court. While long-term marriages are often assumed to be emotionally stable and deeply committed,³² empirical evidence indicates that couples in later stages of life remain vulnerable to marital breakdown. Based on 56 divorce cases recorded in 2022, the majority (66%) were resolved through *verstek* (default judgment) decisions, indicating that one party failed to appear in court or respond

²⁶ "Supreme Court Regulation No. 1 of 2016 on Court Mediation Procedures," Article 3.

²⁷ "Supreme Court Regulation No. 1 of 2016 on Court Mediation Procedures," Article 32.

²⁸ Moh Ali, "Measuring Ex Officio Judge Rights and Application of the Ultra Petitum Partium Principle in Deciding Cases in Religious Courts," *Journal of Law and Legal Reform* 5, no. 1 (January 31, 2024): 383–408.

²⁹ Mursyid Djawas et al., "The Government's Role in Decreasing Divorce Rates in Indonesia: A Study of Its Factors and Impacts in Aceh and South Sulawesi," *AHKAM: Jurnal Ilmu Syariah* 21, no. 1 (June 30, 2021), 163–88.

³⁰ Agus Hermanto, *Problematika Hukum Keluarga Islam di Indonesia* (Malang: CV Literasi Nusantara Abadi, 2021), 72.

³¹ Kayyis Fithri Ajhuri, *Psikologi Perkembangan: Pendekatan Sepanjang Rentang Kehidupan* (Yogyakarta: Penebar Media Pustaka, 2019), 148–49.

³² See: Christian Heim and Caroline Heim, "How Did You Stay Together So Long?" Relationship Longevity, a Cross-Generational Qualitative Study," *Journal of Marital and Family Therapy* 49, no. 4 (October 2023): 781–801; Reza Karimi, Maryam Bakhtiyari, and Abbas Masjedi Arani, "Protective Factors of Marital Stability in Long-Term Marriage Globally: A Systematic Review," *Epidemiology and Health* 41 (June 15, 2019): e2019023.

to the petition. Of these cases, 47 ended in divorce, eight were withdrawn, and one was rejected. The causes of divorce were not singular; instead, they were the cumulative outcome of long-standing conflicts across emotional, economic, violent, and marital fidelity dimensions. In the context of older couples, divorce often represents a systemic failure to address deeply rooted structural inequalities within the marriage relationship.³³ Therefore, a typological approach is essential for understanding how social structures, gender norms, and legal institutions intersect in shaping the decision to dissolve a marriage.

Table 1
Causes of Divorce Among Older Couples in the Palembang Islamic Court³⁴

No.	Main Category	Reasons for Divorce	Number of Cases	Percentage (%)
1.	Prolonged disharmony	Lack of respect, jealousy, incompatibility, and conflict with stepchildren	27	30,3%
2.	Economic factors	Financial neglect, debt, gambling, and alcohol abuse	24	27,1%
3.	External factors	Domestic violence, religious conversion, and desertion	21	23,6%
4.	Marital infidelity	Adultery and unauthorized polygamy	14	15,7%
5.	Other	Childlessness and sexual dysfunction	3	3,4%
Total			89	100%

Source: Processed from the Supreme Court Decision Directory, 2023.

Prolonged disharmony is the most common cause of divorce among older couples. Latent yet recurring tensions create emotionally fragile relationships with little resilience to conflict. In domestic relationships historically built upon unequal power structures, disharmony often reflects failures in hierarchical communication. For instance, in the Palembang Islamic Court Decision No. 2593/Pdt.G/2022/PA.PLG, conflict had persisted since 2011, with the wife repeatedly requesting a divorce during arguments—a pattern driven by an imbalance in decision-making power.³⁵ Similarly, in the Palembang Islamic Court Decision No. 1703/Pdt.G/2022/PA.PLG, the couple chose to live separately for years before formally divorcing due to irreconcilable differences.³⁶ These cases illustrate that domestic conflict rarely emerges as an acute crisis; instead, it accumulates from ongoing frustration in relationships that systematically lack equitable opportunities

³³ Larry W. Taylor, "The Transition to Mid-Life Divorce," *Review of Economics of the Household* 9, no. 2 (June 2011): 251–71.

³⁴ "Directory of Decisions of the Supreme Court of Indonesia."

³⁵ "Palembang Islamic Court Decision No. 2593/Pdt.G/2022/PA.PLG."

³⁶ "Palembang Islamic Court Decision No. 1703/Pdt.G/2022/PA.PLG."

for negotiation. Consequently, communication patterns, emotional responses, and physiological stress management play critical roles in maintaining marital bonds.³⁷

Economic issues rank second among the leading causes of divorce. The husband's failure to provide for the household, the wife's perceived excessive financial demands, and behaviors such as gambling or alcohol abuse often become significant sources of tension. In the Palembang Islamic Court Decision No. 1546/Pdt.G/2022/PA.PLG, the petitioner initiated a divorce, citing the wife's unreasonable financial demands and neglect of domestic duties.³⁸ In contrast, the Palembang Islamic Court Decision No. 2061/Pdt.G/2022/PA.PLG illustrates the opposite scenario: the husband had failed to provide financial support since 2007 and was habitually gambling.³⁹ These divergent cases reveal that in late-life divorce, economic relations are not merely about the distribution of resources but also reflect the underlying power structures within the household. When women lack access to independent financial resources, their bargaining position weakens, and the structural burden of economic dependency becomes increasingly apparent in old age. Such inequality is perpetuated by gendered divisions of labor that position women as passive actors in household economics, further eroding their capacity to exit harmful relationships.⁴⁰ Consequently, economic instability serves as a significant predictor of divorce among older adults.⁴¹

External factors, particularly domestic violence and ideological differences, significantly contribute to divorce. Approximately 21.4% of the analyzed cases involved domestic violence. In Decision the Palembang Islamic Court No. 2219/Pdt.G/2022/PA.PLG, the respondent, not only perpetrated physical violence but also threatened to kill the petitioner with a sharp weapon.⁴² Such cases illustrate that the household remains a locus of domination and power, often shielded by the privatized nature of the domestic sphere, even when violence transgresses ethical and legal boundaries. In addition to violence, religious conversion can act as a catalyst for divorce, as demonstrated in the Palembang Islamic Court Decision No. 1696/Pdt.G/2022/PA.PLG, a husband who converted away from Islam, prohibited his wife from practicing her faith, resulting in spiritual and psychological marginalization.⁴³ These patterns reveal that power dynamics extend beyond economic and emotional realms to encompass control over identity and value

³⁷ See: Elisa Weber and Gizem Hülür, "The Role of Relationship Conflict for Momentary Loneliness and Affect in the Daily Lives of Older Couples," *Journal of Social and Personal Relationships* 40, no. 7 (July 2023): 2033–60; M. Rosie Shrout et al., "'We've Got This': Middle-Aged and Older Couples' Satisfying Relationships and We-Talk Promote Better Physiological, Relational, and Emotional Responses to Conflict," *Psychosomatic Medicine* 85, no. 2 (February 2023): 154–64.

³⁸ "Palembang Islamic Court Decision No. 1546/Pdt.G/2022/PA.PLG."

³⁹ "Palembang Islamic Court Decision No. 2061/Pdt.G/2022/PA.PLG."

⁴⁰ Rinaldo, Nisa, and Nurmila, "Divorce Narratives and Class Inequalities in Indonesia," 1195–1216.

⁴¹ Rachel Donnelly, "Job Insecurity as a Predictor of Gray Divorce: A Gendered Dyadic Analysis," *Social Forces* 103, no. 3 (January 13, 2025): 928–47.

⁴² "Palembang Islamic Court Decision No. 2219/Pdt.G/2022/PA.PLG."

⁴³ "Palembang Islamic Court Decision No. 1696/Pdt.G/2022/PA.PLG."

systems. Women lacking access to social or legal support often remain trapped in oppressive relationships for years before seeking divorce.⁴⁴

Infidelity, whether manifested as extramarital affairs or unauthorized polygamy, is a significant contributor to divorce. The wife initiates most cases of this nature. In the Palembang Islamic Court Decision No. 1222/Pdt.G/2022/PA.PLG, the husband, entered into a second marriage without his wife's consent and subsequently ceased providing financial support.⁴⁵ A similar scenario arose in the Palembang Islamic Court Decision No. 1510/Pdt.G/2022/PA.PLG, where the husband was allegedly involved in an affair with the petitioner's niece, resulting in tension within the extended family.⁴⁶ In this context, infidelity is not merely a violation of marital ethics; it also reflects asymmetric power dynamics, wherein a wife's right to be informed and to consent to significant decisions is systematically overlooked. Unchecked jealousy or suspicion can exacerbate trust deficits even in the absence of concrete evidence. In a cultural environment that normalizes male privilege in family decision-making, such actions symbolize control that reinforces the husband's dominance over the wife's rights and autonomy.

Although comparatively rare, issues such as childlessness and sexual dysfunction can also contribute to divorce among older couples. In the Palembang Islamic Court Decision No. 2740/Pdt.G/2022/PA.PLG, a couple, sought a divorce due to the social pressure they faced as childless individuals, which gradually eroded their marital harmony.⁴⁷ This finding underscores the persistent influence of societal expectations regarding reproductive and sexual functions within marriage,⁴⁸ even at an advanced age. As biological capacities decline with age, the body, particularly the female body, is often scrutinized rather than regarded as a subject deserving of marital rights. Norms that idealize women's roles as wives and mothers perpetuate inequality, as the failure to fulfill these roles is frequently used to justify divorce instead of fostering mutual understanding in light of natural physical changes. Consequently, health-related issues in late-life divorce cannot be separated from the value systems that continue to compel couples to conform to idealized gender roles, regardless of age and biological limitations.⁴⁹

Islamic Legal Reasoning in Divorce Cases Involving Older Couples

Divorce among older couples represents a complex and growing socio-legal phenomenon across various regions in Indonesia, including at the Palembang Islamic Court. Although long-term marriages are typically assumed to be more

⁴⁴ Rinaldo, Nisa, and Nurmila, "Divorce Narratives and Class Inequalities in Indonesia," 1195–1216.

⁴⁵ "Palembang Islamic Court Decision No. 1222/Pdt.G/2022/PA.PLG."

⁴⁶ "Palembang Islamic Court Decision No. 1510/Pdt.G/2022/PA.PLG."

⁴⁷ "Palembang Islamic Court Decision No. 2740/Pdt.G/2022/PA.PLG."

⁴⁸ See: Alice Zulkarnain and Sanders Korenman, "Divorce and Health in Middle and Older Ages," *Review of Economics of the Household* 17, no. 4 (December 2019): 1081–1106; Joan K. Monin et al., "Associations between Dementia Staging, Neuropsychiatric Behavioral Symptoms, And Divorce or Separation in Late Life: A Case Control Study," ed. Ashish Sarangi, *PLOS ONE* 18, no. 8 (August 16, 2023): e0289311.

⁴⁹ Lin et al., "Antecedents of Gray Divorce," 1022–1031.

emotionally resilient and stable in terms of commitment, the realities of late-life domestic life remain vulnerable to breakdown.⁵⁰ An analysis of 56 divorce cases adjudicated in 2022 reveals that Muslim judges employed various argumentative approaches in rendering their decisions, incorporating juridical, moral, social, and psychological considerations.⁵¹ These argumentative approaches illustrate that judicial practice in Islamic courts is not solely grounded in the normative doctrines of Islamic law or state law but is also influenced by the broader complexities of social structures, particularly those that shape power dynamics between husbands and wives within the institution of marriage. Analyzing how judges construct legal reasoning is thus critical for understanding how the judiciary responds to the relational and structural inequalities underlying late-life divorce.

From the analysis of 56 judicial decisions, four predominant patterns of reasoning emerged: (1) a theological approach grounded in public interest (*maṣlaḥah*), (2) a juridical approach based on evidentiary standards, (3) a rights-based approach focused on the protection of spouses, and (4) a socio-moral approach that reflects community values. First, the theological reasoning based on *maṣlaḥah* seeks to balance the Islamic ideal of discouraging divorce with the reality of irreparable marital discord. Within this framework, judges perceive divorce as a necessary solution when the household becomes a site of emotional suffering, psychological violence, or prolonged stagnation.⁵² Many judicial decisions indicate that older couples do not pursue divorce lightly; instead, they do so after enduring long-term asymmetric and dysfunctional relationships.⁵³ In this context, the mediation process mandated under Supreme Court Regulation No. 1 of 2016 often proves ineffective, as power imbalances accumulated over decades are rarely resolvable through procedural mechanisms.⁵⁴ Judges' decisions to grant divorce following unsuccessful mediation reflect a recognition that compelling the continuation of an unequal marriage risks further entrenching one party's domination over the other.⁵⁵

Second, the legal approach based on evidentiary assessment remains a fundamental foundation of judicial decisions. Muslim judges meticulously evaluate evidence, party testimonies, and witness statements to ensure that divorce claims

⁵⁰ See: Heaton and Cammack, "Explaining the Recent Upturn in Divorce in Indonesia," 776–96; Sururie, Athoillah, and Ulhaq, "Strategies to Prevent Increasing Divorce Rates for Muslim Families in Indonesia," 734–59.

⁵¹ Muhammad Zubair Abbasi, "Judicial Ijtihād as a Tool for Legal Reform: Extending Women's Right to Divorce under Islamic Law in Pakistan," *Islamic Law and Society* 24, no. 4 (October 3, 2017): 384–411.

⁵² See: Nofiardi Nofiardi, "Testimonium de Auditu Witness: Comparison of Maṣlāḥah in the Settlement of Syiqāq in the Religious Court of the Border Regions," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (June 5, 2023): 1016–36; Asni, "The Mashlahah Consideration in Divorce Cases Caused by Domestic Violence in Religious Court," *Ahkam: Jurnal Ilmu Syariah* 14, no. 1 (2014): 105–14.

⁵³ Syazili, Interview with a Judge of the Palembang Islamic Court, April 10, 2022.

⁵⁴ Dessy Sunarsi, Yuherman, and Sumiyati, "Effectiveness of Mediation Implementations in the Religious Courts of Indonesia," *International Journal of Innovation, Creativity and Change* 10, no. 3 (2019): 49–64.

⁵⁵ S.M.A. Rachman and H. Ali, "Divorce Without In-Between: An Empirical Study on the Failure of Mediation in the Religious Court of Sengeti Jambi Province," *Man in India* 96, no. 11 (2016): 4209–24.

are legally substantiated and not merely driven by temporary emotional disputes.⁵⁶ Although the legal system normatively demands objective proof, this process is situated within asymmetric structures of evidentiary access and narrative authority between husbands and wives. As noted by Sirjoni, late-life divorce cases must adhere to strict evidentiary procedures, with judges requiring compelling arguments and relevant documentation from both parties.⁵⁷ In *cerai gugat*, women are often tasked with substantiating claims of neglect or abuse that may not be easily documented through written evidence. In contrast, *talak* tends to rely on unilateral claims made by the husband, which are more readily accepted due to prevailing traditional norms that privilege male authority. Consequently, even judges' seemingly neutral juridical reasoning operates within a systemic framework that does not afford equal standing to both spouses.⁵⁸

Third, judicial arguments centered on protecting spousal rights, particularly concerning biological and psychological well-being, have emerged in response to the complexities of aging.⁵⁹ In several cases, a wife's inability to meet sexual expectations has been cited as grounds for divorce. These arguments are often linked to physiological changes associated with menopause and are interpreted as a failure to fulfill domestic and biological obligations. In contrast, societal expectations regarding the sexual capacity of older men are typically upheld, with little consideration given to relational or emotional dimensions.⁶⁰ In such cases, judges strive to balance the husband's right to sexual satisfaction with the wife's rights to comfort, bodily integrity, and safety.⁶¹ However, judicial decisions that emphasize the wife's reproductive and sexual functions risk reinforcing reductive narratives that portray women as passive subjects within the marital relationship, thereby overlooking the health conditions and age-related vulnerabilities that often accompany later life.

Fourth, Muslim judges frequently employ socio-moral reasoning, particularly in cases involving shame, family pressure, or societal expectations regarding the ideal household.⁶² Many decisions indicate that older couples often hesitate to file for divorce, even after years of separation, due to fear of judgment from their children, grandchildren, or the surrounding community.⁶³ In such instances, judges often favor compromise, promoting communication and mediation even when the

⁵⁶ Sudirman, *Pisah Demi Sakinah Kajian Kasus Mediasi Perceraian di Pengadilan Agama* (Jember: Pustaka Radja, 2018), 11.

⁵⁷ Sirjoni, Interview with a Judge of the Palembang Islamic Court, April 10, 2022.

⁵⁸ Rohmadi Rohmadi, "Polygamy in Indonesia: A Critical Interpretation through the Lens of Mubadalah Theory," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi dan Keagamaan* 11, no. 2 (October 15, 2024): 378–90.

⁵⁹ Andar Yuni, "The Use of Ex Officio to Fulfill Women's Post-Divorce Rights at the Samarinda Religious Court," 135–54.

⁶⁰ Lekat, Interview with a Judge of the Palembang Islamic Court, April 4, 2022.

⁶¹ Haddad Ulum Harahap et al., "Legal Status of a Wife Leaving Her Husband and Vice Versa in Contextual Fiqh Studies: A Pre-Divorce Analysis," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi dan Keagamaan* 12, no. 1 (April 16, 2025): 50–63.

⁶² Umar Haris Sanjaya and Aunur Rahim Faqih, *Hukum Perkawinan Islam di Indonesia* (Yogyakarta: Gama Media, 2017), 111–28.

⁶³ Rusyidi, Interview with a Judge of the Palembang Islamic Court, April 10, 2022.

relationship has clearly deteriorated beyond repair. Social and religious norms that idealize marital permanence frequently overlook the suffering endured by women trapped in dysfunctional relationships, thereby transforming marriage into a structural burden rather than a voluntary union.⁶⁴ Judicial considerations based on moral expectations can thus delay substantive justice for women who have remained in inequitable marriages for extended periods.⁶⁵

These findings demonstrate that judges at the Palembang Islamic Court serve not only as interpreters of legal norms but also as social actors embedded within systems that may either reproduce or challenge patriarchal structures in marriage.⁶⁶ Their legal reasoning reflects an ongoing negotiation among Islamic principles, statutory law, and societal values. Nevertheless, a tendency to preserve traditional relational hierarchies remains evident in several judicial decisions, particularly those that emphasize women's obligations more strongly than their rights. Therefore, it is imperative to promote a re-examination of *maṣlaḥah*, evidentiary standards, and rights protection more responsive to the intersecting dimensions of age and gender.⁶⁷ Such an approach aligns with the foundational Islamic legal principle of justice and the protection of the vulnerable, as encapsulated in the objectives of Islamic law (*maqāṣid al-sharī'ah*), which, in today's context, must be translated into a framework that is sensitive to social transformation and structural inequality within marital relationships.

Structural Gender Inequality in Late-Life Divorce Dynamics

The typology of divorce causes and the patterns of legal reasoning employed by Muslim judges in cases involving older couples at the Palembang Islamic Court indicate that late-life divorce is not merely the result of personal failure or a lack of marital commitment. Rather, it reflects deeply entrenched power asymmetries that have persisted for decades. These inequalities are evident not only in the interpersonal relationships between spouses but also in the institutional responses of the judiciary to such cases. A systemic configuration emerges in which the domestic sphere has long served as a site of male dominance that marginalizes women's rights.⁶⁸ Even when women access the public sphere through legal recourse, they face structural obstacles that are institutionalized through normative legal frameworks.⁶⁹

⁶⁴ Ha Song Vu et al., "Divorce in the Context of Domestic Violence Against Women in Vietnam," *Culture, Health & Sexuality* 16, no. 6 (July 3, 2014): 634–47.

⁶⁵ Euis Nurlaelawati, "Muslim Women in Indonesian Religious Courts," *Islamic Law and Society* 20, no. 3 (2013): 242–71.

⁶⁶ Ramadhita Ramadhita, Mahrus Ali, and Bachri Syabbul, "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (December 31, 2023): 2206347.

⁶⁷ Laras Shesa et al., "Reformulating Progressive Fiqh of Talak (Divorce): A Contemporary Study of the Principle of Making Divorce More Difficult in SEMA No. 1 of 2022 for Women's Protection," *MILRev: Metro Islamic Law Review* 3, no. 2 (December 13, 2024): 236–62.

⁶⁸ Rohmadi, "Polygamy in Indonesia," 378–90.

⁶⁹ Ramadhita, Ali, and Syabbul, "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," 2206347.

In examining the causes of divorce, data indicate that wives more frequently cite prolonged disharmony and domestic violence.⁷⁰ At the same time, husbands often initiate divorce proceedings due to economic concerns or incompatibility. This trend suggests that older women tend to endure structural inequalities in household dynamics for years before seeking legal recourse. These relationships are frequently influenced by traditional role divisions that place women in subordinate positions—emotionally, economically, and sexually—resulting in the long-term accumulation of distress.⁷¹ When women ultimately file for divorce later in life, it is rarely a reaction to a single incident; instead, it represents a form of resistance against relational structures that have systematically marginalized their position and agency within the household.⁷²

Judicial responses to these dynamics reflect an ambivalence between the desire to preserve traditional social structures and the need to deliver substantive justice to individuals marginalized within marriage. In many cases, Muslim judges proceed cautiously when granting divorce, consistently prioritizing mediation as a preliminary step. However, mediation in relationships that have been structurally imbalanced from the outset often fails to produce meaningful resolutions, precisely because it overlooks the asymmetrical distribution of power between spouses. In such contexts, the continuation of marriage may serve only to prolong domination and suffering. Therefore, when judges choose to grant a divorce after unsuccessful mediation, it can be interpreted as an acknowledgment of the household's failure to function as a space for equitable relational dynamics.⁷³

In terms of legal reasoning, the use of both evidentiary and *maṣlahah*-based arguments illustrates that formalist interpretations of the law do not strictly bind Muslim judges; instead, they are also attuned to the lived social realities of the litigants. However, the evidentiary process often perpetuates structural inequality, as not all forms of suffering, especially those experienced by women, can be substantiated through material or documentary evidence. Verbal abuse, psychological manipulation, and economic domination are seldom documented in ways that satisfy the formal standards of proof required in court. Consequently, women must navigate legal systems that prioritize formal evidence, thereby limiting their access to justice in cases involving symbolic or structural forms of violence and inequality. In this regard, the judiciary remains only partially responsive to the lived experiences of women, particularly those that fall outside the parameters of physical or overtly measurable harm.⁷⁴

⁷⁰ Maksudha Akter and Roquia Begum, "Factors for Divorce of Women Undergoing Divorce in Bangladesh," *Journal of Divorce & Remarriage* 53, no. 8 (November 2012): 639–51.

⁷¹ Pia S. Schober, "Gender Equality and Outsourcing of Domestic Work, Childbearing, and Relationship Stability Among British Couples," *Journal of Family Issues* 34, no. 1 (January 2013): 25–52.

⁷² Rinaldo, Nisa, and Nurmila, "Divorce Narratives and Class Inequalities in Indonesia," 1195–1216.

⁷³ Ramadhita, Ali, and Syabbul, "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," 2206347.

⁷⁴ Muhammad Isna Wahyudi, "Women Dealing with the Law in Religious Courts," *AHKAM: Jurnal Ilmu Syariah* 18, no. 2 (July 12, 2018): 305–20.

Meanwhile, legal arguments that draw upon social and moral norms illustrate how the courtroom is intertwined with broader cultural expectations.⁷⁵ Norms that compel women to maintain household harmony—even in deeply fractured relationships—are institutionalized through judicial narratives prioritizing family cohesion over individual autonomy. Judges, serving as state officials and moral arbiters, often balance the protection of individual rights with the perceived necessity of preserving social stability rooted in traditional gender roles. In several cases, judicial decisions that excessively emphasize propriety or family honor may inadvertently reinforce inequality, shifting the moral burden of conflict resolution onto women.⁷⁶

Taken as a whole, the synthesis of divorce causation data and patterns of judicial reasoning reveals that the legal system, particularly in the context of late-life divorce, continues to operate within a framework that perpetuates patriarchal relations in both private and public domains.⁷⁷ On one hand, long-standing domestic dominance renders divorce a delayed form of justice. On the other hand, when women present their cases in the public sphere of the courtroom, they continue to face institutional bias that complicates their access to substantive justice. Therefore, strengthening legal protections for older women cannot be achieved through procedural reform alone; it also requires a critical re-engagement with Islamic legal values, particularly those rooted in justice and compassion, that can address shifting gender relations and structural inequalities in the later stages of life.⁷⁸

Conclusion

This article demonstrates that divorce among older couples is not merely the result of interpersonal conflicts that arise in later life; rather, it is the culmination of long-standing relational inequalities rooted in broader social structures and a patriarchal legal system. The most critical and unexpected finding of this study is that older women who file for divorce are not solely seeking the legal dissolution of marriage; instead, they are attempting to liberate themselves from oppressive domestic power dynamics after years of enduring symbolic violence, economic neglect, and emotional subordination. Furthermore, the study reveals that the legal reasoning employed by Muslim judges in adjudicating late-life divorce cases is often not entirely neutral. The judicial narratives—while seemingly rational and evidence-based—implicitly reproduce conservative social norms and moral frameworks that may undermine women's bargaining power, particularly during mediation and in the construction of acceptable grounds for divorce.

This research's primary contribution to Islamic legal studies and socio-legal scholarship lies in its ability to reveal institutionalized power dynamics within the religious court system, particularly in the context of late-life divorce. By integrating

⁷⁵ Abbasi, "Judicial Ijtihād as a Tool for Legal Reform," 384–411.

⁷⁶ Otong Sulaeman et al., "Negotiating Gender Justice in Minangkabau Marital Disputes: Between Adat, Islamic, and State Law," *Juris: Jurnal Ilmiah Syariah* 24, no. 1 (2025): 39–49.

⁷⁷ Wahyudi, "Women Dealing with the Law in Religious Courts," 305–20.

⁷⁸ Shesa et al., "Reformulating Progressive Fiqh of Talak (Divorce)," 236–62.

jurisprudential analysis with qualitative interviews conducted with judges, this article presents a novel interpretive framework that positions divorce not merely as a legal event but as a social phenomenon that reflects structural failures in achieving equitable and just marital relations for older people. However, this study is limited by its geographic scope and the number of informants, which constrains the generalizability of its findings. Future research should pursue comparative studies across multiple jurisdictions of Islamic courts in Indonesia to deepen and contextualize these insights. Moving forward, there is an urgent need for transformative, gender-sensitive reforms in family law policy, along with multisectoral collaboration in designing a legal protection system that is responsive to the intersections of age, gender, and social class.

Data Availability

The Islamic court decisions analyzed in this research are publicly accessible. In contrast, interview data are not publicly available due to confidentiality constraints. However, anonymized datasets can be obtained from the corresponding author upon reasonable request.

Disclosure Statement

No potential conflicts of interest were reported by the authors.

Ethics Statement

Ethical approval for this study was obtained from the Palembang Islamic Court (No. W6-A1/895/HK.05/III/2023). All informants participated voluntarily and provided informed consent before their involvement in the interviews.

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